3-14-2016

State v. Townsend Respondent's Brief Dckt. 43553

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43553**
Plaintiff-Respondent,	)	
	)	**Ada Co. Case No.**
v.	)	**CR-MD-2015-4110**
	)	
THOMAS N. TOWNSEND,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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District Judge

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

STATEMENT OF THE CASE

Nature Of The Case

Thomas N. Townsend appeals from his conviction for misdemeanor DUI. Specifically, he challenges the denial of his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

The state charged Townsend with one count of DUI, second offense, and one count of failure to purchase a driver's license, both misdemeanors. (R., pp. 6-7, 65-66.) Townsend moved to suppress evidence of his blood alcohol content ("BAC") obtained as a result of a blood draw. (R., pp. 17-21.) The magistrate found that Detective Weires pulled Townsend over after he drove "the wrong way into the oncoming east bound lanes of State Street." (R., p. 50.) A "strong odor of alcohol" emanated from the cab of Townsend's truck, "Townsend had glassy, red eyes, … his speech was thick-tongued and slurred," he admitted he had just left a bar, and also admitted consuming seven beers. (R., p. 51.) Townsend failed all three field sobriety tests and Detective Weires arrested him for DUI. (R., p. 51.)

Detective Weires performed a breath test on Townsend, after waiting 15 minutes to observe him, but Townsend stopped blowing on his first attempt (producing an insufficient sample) and "simply failed to exhale any air on his second attempt." (R., pp. 51-52.)

> Townsend stated that he was not going to comply with the test and that Weires would have to take his blood. Townsend was transported to the Ada County Jail to submit a blood sample. After arriving at the Ada County Jail, an Ada County paramedic drew blood samples from Townsend. Weires testified that Townsend was

> polite and compliant and that he did not physically resist the blood draw.

(R., p. 52.)

The magistrate denied the motion to suppress on two bases. First, it found the blood draw appropriate under implied consent. (R., pp. 54-56.) Second, it found the warrantless blood draw proper under exigent circumstances. (R., pp. 56-60.)

Townsend entered a conditional guilty plea, preserving his right to challenge the denial of suppression on appeal. (R., pp. 70-71.) He appealed from the entry of judgment. (R., pp. 64, 75-77.) The district court affirmed the magistrate's exigent circumstances holding without reaching the implied consent holding. (R., pp. 143-151.) Townsend again appealed. (R., pp. 153-55.)

ISSUE

Townsend states the issue on appeal as:

> I. Under the "Totality of the Circumstances" standard, Did the District Court Err When It Ruled That The Warrantless and Nonconsensual Blood Draw Was Justified under the Exigency Exception to the Warrant Requirement?

(Appellant's brief, p. 6 (capitalization original).)

The state rephrases the issues as:

1. Has Townsend failed to demonstrate that the district court erred by affirming the magistrate's ruling that exigent circumstances justified the warrantless blood draw?

2. If the blood draw was not justified by exigent circumstances, must this Court remand to the magistrate for factual findings and application of currently existing law regarding the implied consent exception?

ARGUMENT

I.
Townsend Has Failed To Demonstrate That The District Court Erred By Affirming The Magistrate's Ruling That Exigent Circumstances Justified The Warrantless Blood Draw

A. Introduction

The magistrate held that the warrantless blood draw was justified by exigent circumstances. (R. pp. 56-60.) The district court affirmed. (R., pp. 148-51.) Townsend contends the lower courts erred because the DUI investigation in this case was "routine." (Appellant's brief, pp. 7-12.) Townsend's request for a bright-line test is contrary to the very authority he relies upon. Application of the "totality of the circumstances" test, as required by applicable law and done by the lower courts, shows that the warrantless blood draw was justified by the exigencies confronted by Detective Weires.

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found." State v. Colvin, 157 Idaho 881, 882, 341 P.3d 598, 599 (Ct. App. 2014). On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court "examine[s] the magistrate

record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id.

C. Exigent Circumstances Justified The Warrantless Blood Draw

"[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." Mincey v. Arizona, 437 U.S. 385, 393-94 (1978). Such exigencies include the "imminent risk of destruction of evidence." State v. Robinson, 144 Idaho 496, 499, 163 P.3d 1208, 1211 (Ct. App. 2007). "To determine whether a law enforcement officer faced an emergency that justified acting without a warrant, this Court looks to the totality of circumstances." Missouri v. McNeely, 133 S. Ct. 1552, 1559 (2013). In Schmerber v. California, 384 U.S. 757, 768-69 (1966), the Supreme Court of the United States found the following totality of the circumstances to justify a warrantless blood draw because of exigent circumstances:

> Here, there was plainly probable cause for the officer to arrest petitioner and charge him with driving an automobile while under the influence of intoxicating liquor. The police officer who arrived at the scene shortly after the accident smelled liquor on petitioner's breath, and testified that petitioner's eyes were 'bloodshot, watery, sort of a glassy appearance.' The officer saw petitioner again at the hospital, within two hours of the accident. There he noticed similar symptoms of drunkenness. He thereupon informed petitioner 'that he was under arrest and that he was entitled to the services of an attorney, and that he could remain silent, and that anything that he told me would be used against him in evidence.'

(Footnote omitted.)

The magistrate applied the totality of the circumstances test. (R., pp. 56-57. Among the circumstances considered was that it would have taken, "at the very minimum, one and one half hours" to get a search warrant. (R., p. 59.) The magistrate further considered that extrapolation of test results backward to the time of driving would not be available; that a test showing less than .08 would result in a legal bar to prosecution; the unavailability of other testing methods; and the possibility that a potential prosecution for an excessive BAC would be lost. (R., pp. 58-59.) The district court in turn concluded that the totality of the circumstances created an exigency that justified not seeking a search warrant. (R., pp. 148-51.) Because the lower courts applied the correct legal standard to the totality of the circumstances shown by the trial court's factual findings, they correctly held that the blood draw was constitutionally reasonable.

On appeal Townsend argues that this case is "identical" to Missouri v. McNeely, 133 S. Ct. 1552 (2013), "in that it was a routine DUI investigation." (Appellant's brief, p. 8.) There are two important distinctions Townsend overlooks. First, in McNeely the state argued that metabolism of blood alcohol "creates an exigent circumstance in every case" and "did not separately contend that the warrantless blood test was reasonable regardless of whether the natural dissipation of alcohol in a suspect's blood categorically justifies dispensing with the warrant requirement." 133 S. Ct. at 1567-68. The Court therefore did not reach the question of whether exigent circumstances were present in that case because "the arguments and the record do not provide the Court with an adequate analytic framework for a detailed discussion of all the relevant factors

that can be taken into account in determining the reasonableness of acting without a warrant." Id. at 1568. Because the Supreme Court never analyzed whether the facts in McNeely constituted exigent circumstances under the totality test, its opinion offers no guidance in this case.

An opinion that does offer guidance, however, is Schmerber, 384 U.S. 757. As set forth above, the totality of circumstances in that case was probable cause to arrest for DUI; a blood draw within two hours of the accident that garnered police attention; metabolism of the blood in his system; and an investigation of the DUI and the accident. Id. at 768-69. See also McNeely, 133 S. Ct. at 1559-60 (discussing Schmerber). Although Schmerber was transported to the hospital for medical reasons, the time-frames at issue for conducting an investigation and then obtaining a search warrant in that case and this one are very similar. In Schmerber the investigation alone took almost two hours, which justified application of the exigency exception regardless of the time it might have taken to obtain a warrant. In this case the investigation was shorter, but adding in the time to obtain a warrant would have taken the total time well beyond the two hours deemed sufficient in Schmerber.

Second, and more importantly, the Supreme Court's analysis specifically rejects Townsend's argument (Appellant's brief, pp. 7-12) that exigent circumstances cannot exist in a "routine" DUI investigation. The Court specifically stated:

> Although the Missouri Supreme Court referred to this case as "unquestionably a routine DWI case," the fact that a particular drunk-driving stop is "routine" in the sense that it does not involve "'special facts,'" such as the need for the police to attend to a car

> accident, *does not mean a warrant is required*. Other factors present in an ordinary traffic stop, such as the procedures in place for obtaining a warrant or the availability of a magistrate judge, may affect whether the police can obtain a warrant in an expeditious way and therefore may establish an exigency that permits a warrantless search. The relevant factors in determining whether a warrantless search is reasonable, including the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence, will no doubt vary depending upon the circumstances in the case.

McNeely, 133 S. Ct. at 1568 (emphasis added).

Townsend advocates for application of a "special facts" test that would make the exigency exception inapplicable in "routine" DUI cases. (Appellant's brief, pp. 8-10.) Although this was the standard applied by the *Missouri* court, it was specifically rejected by the Supreme Court. McNeely, 133 S. Ct. at 1568. Because Townsend's claim of error is based on a legal standard squarely rejected by the Supreme Court of the United States, he has failed to show error by the magistrate or district court.

II.
If The Blood Draw Was Not Justified By Exigent Circumstances, This Court Should Remand To The Magistrate For Factual Findings And Application Of Currently Existing Law Regarding The Implied Consent Exception

In 2014 this Court reversed prior precedent and held that implied consent is constitutionally revocable. State v. Wulff, 157 Idaho 416, 423, 337 P.3d 575, 582 (2014); State v. Halseth, 157 Idaho 643, 646, 339 P.3d 368, 371 (2014); State v. Arrotta, 157 Idaho 773, 774, 339 P.3d 1177, 1178 (2014). Because the magistrate did not have the benefit of these decisions, and was deciding the case on the basis of existing law holding that implied consent was not revocable, he ultimately did not decide the factual question of whether Townsend revoked his

implied consent. He did find that Townsend was not blowing adequately for the breath test, and then "stated that he was not going to comply with the test and that Weires would have to take his blood." (R., p. 52.[1]) This finding could be interpreted as Townsend withdrawing all consent, but is also consistent with refusing a breath test and instead insisting on a blood test. Because the district court did not factually find whether Townsend had revoked his implied consent, if the lower courts are not affirmed on the exigency analysis remand for further factual findings is appropriate.

[1] The magistrate also noted Townsend's testimony in this regard, but did not make any findings or credibility determinations:

> Townsend testified that he objected to the blood draw procedure and protested that the procedure violated his constitutional rights. These objections were not voiced to Weires, but could have been made to someone else at the Ada County Jail. Townsend further testified that jail staff told him that if he did not cooperate they would hold him down and take his blood. Townsend admitted that no one ever held him down. He stated that he never gave anyone permission to take his blood and that he did not physically resist the blood drawing.

(R., p. 52.) When asked whether Townsend "ever state[d] any objection to you or to anyone else there, any objection that he had to the blood draw" Detective Weires testified, "No, sir." (Tr., p. 13, L. 25 – p. 14, L. 3.)

CONCLUSION

The state respectfully requests this Court to affirm Townsend's conviction for DUI, second offense.

DATED this 14th day of March, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of March, 2016, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd